

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

THOMAS J. MARTIN,

Case No. 07-6260-HO

Plaintiff,

ORDER

v.

KENT D. HOWE,

Defendant,

Defendant filed a motion to dismiss the pro se complaint for failure to state a claim, and because plaintiff is not the real party in interest. While this motion was pending, plaintiff filed a first amended complaint, defendant filed an answer to the first amended complaint and a motion to substitute defendant, plaintiff filed a motion for partial summary judgment and defendant filed a motion for summary judgment. The pending summary judgment motions will be resolved by separate order.

The motion to dismiss is denied as moot because it does not address the first amended complaint. In the alternative, the motion to dismiss is denied because plaintiff's allegations,

including allegations related to the issue of standing, implicate factual matters more appropriately resolved at the summary judgment or trial stages. Defendant's motion to substitute Lane County for defendant Howe is denied. Plaintiff cites to 42 U.S.C. § 1983. An individual may be a proper defendant under Section 1983.

Conclusion

Based on the foregoing, defendant's motion to dismiss [#7] is denied; and defendant's motion to substitute party [#11] is denied.

IT IS SO ORDERED,

DATED this 25<sup>th</sup> day of September, 2008.

s/ Michael R. Hogan  
United States District Judge